UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1992/1
1 July 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Tenth session
20-31 July 1992
Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from Governments

Introduction

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

GE.92-12641/4479H

2. The Sub-Commission, in its resolution 1991/30 of 29 August 1991, requested the Secretary-General to transmit the report of the Working Group on its ninth session (E/CN.4/Sub.2/1991/40/Rev.1) to Governments for specific comments and suggestions for the completion of the first reading of the text of the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1991/40/Rev.1, annex II) and the beginning of the second reading at the tenth session of the Working Group. The Commission on Human Rights endorsed this request in its resolution 1992/44 of 3 March 1992. In accordance with these resolutions, appropriate communications were sent to Governments. The present document contains replies received as of 31 July 1992. Further replies, if any, will be included in addenda to this document.

Information received from Governments

Finland

1. The Ministry of Justice considers the draft declaration on the rights of indigenous peoples to be an important document on human rights whose approval should be achieved as soon as possible.

2. Many indigenous peoples need the support of the international community in their endeavours to achieve full human rights and a position of equality. The Indigenous and Tribal Populations Convention, 1957 (No. 107) of the International Labour Organisation is obsolete and partly based on principles that are no longer acceptable. The new ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169) is, on the other hand, not widely ratified, even though it came into force last autumn.

3. Many indigenous peoples form ethnic, linguistic or religious minorities in their home country or countries and could thus refer to those provisions of international law which regulate the rights of minorities in order to develop their rights. Unfortunately, however, there are very few such provisions. The preparation of more detailed conventions to complement the International Covenant on Civil and Political Rights is still going on in the Council of Europe, and neither the draft declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities nor the documents prepared within the Conference on Security and Cooperation in Europe are legally binding on States.

4. Under these circumstances a declaration based on generally acceptable human rights principles would be needed as a guideline for the development of the rights of indigenous peoples.

5. During the past years the legal position of the Finnish Samis has been improved in many ways. An Act on the right to use the Sami language has been issued, the right of access to education in the medium of Sami and the right to be instructed in the Sami language have been confirmed, and parliament is today obliged to hear Samis when matters of special interest to them are being dealt with. Certain questions in relation to the rights of the Samis are, however, still open. For instance, the question of the right of the Samis to those lands and waters which they have traditionally used for their means of livelihood is not yet solved.

6. After long and careful work the contents of a great part of the articles of the declaration under preparation seem to be such that they are acceptable to the representatives of both the indigenous peoples and the Governments. The major part of the declaration poses no problems to the Finnish Government either. The articles of the declaration are mainly built on the same principles as those which are observed in Finland when regulating the position of the minorities.

7. In the light of experiences of earlier meetings it can, however, be deduced that some of the articles are still likely to arouse discussion and the points of view can be expected to be far apart. Some of these questions may be problematical to Finland, too. In regard to such questions it might be reasonable to consider to what extent it is possible to add alternatives to the controversial issues so that the representatives of the indigenous peoples and the States can together choose those solutions which would best correspond to their aims. This, of course, would give rise to the problem of how the alternative solutions would fit the character of the declaration and how adding alternatives could be done without weakening the text of the declaration. Since, however, the formulation of a declaration must be considered important and since the most serious obstances to the approval of the text can largely be foreseen, the development of alternative solutions or some corresponding way of making the text of the declaration more flexible may turn out to be useful in the long run, in spite of the above-mentioned misgivings.

8. Problematic questions as referred to above are, inter alia, those questions which concern the autonomy of indigenous peoples and the right of these peoples to the lands they have traditionally used for their means of livelihood and, possibly, the question of the demilitarization of territories inhabited by indigenous peoples.

9. As to the question of autonomy, the Ministry refers to those conclusions and recommendations reached at the United Nations expert meeting on internal self-government for indigenous peoples at Nuuk in the autumn of 1991 (see E/CN.4/1992/42). The utilization, when necessary, of the results of this meeting, either by refining the text of the declaration or by drafting explanatory statements on the basis of the terminology formulated at the meeting, may prove fruitful.

10. In Finland, too, the question of the right of the Samis to the lands which they have traditionally used for their means of livelihood is still open. A joint effort to solve this question is, however, under way. Under the prevailing circumstances the Ministry of Justice is, however, unable to indicate how the provisions on land ownership should be amended in order to gain the approval of as great a number as possible of representatives both of the indigenous peoples and the governments. Instead, the Ministry proposes for consideration the question whether it would be feasible to find alternatives for the solution of the problem by applying the provisions on the application of unratified conventions contained in the Constitution of ILO. The ILO Expert Committee could, in that case, if it so wished, express its views on what measures could be taken to remove the obstacles, if any, in different countries to the ratification of Convention No. 169 regarding land ownership. The fact that the General Assembly has declared 1993 to be the

International Year for the World's Indigenous People may, in the opinion of the Ministry of Justice, be a suitable ground for the Governing Body of ILO to decide to institute such follow-up measures.

11. On the question of demilitarization, the results of the United Nations Conference on Environment and Development held in Rio de Janeiro from 1-12 June 1992, should be utilized.

12. As regards the details of the draft declaration, the Ministry of Justice wishes to recall that the Finnish representative proposed an amendment to draft operative paragraph 18 at the meeting of the Working Group in 1991. The amendment was not discussed then because of lack of time. The Ministry of Justice supports the proposed amendment and attaches a copy of it to this statement:

Draft operative paragraph 18

Observing the following facts, that social and cultural structures of the indigenous peoples cannot be disconnected from the economic ones. These structures are closely interrelated and they form an entity.

In some cases pertaining to the Sami situation, for example in Finland, the Reindeer Herding legislation on one hand partially recognizes the Sami economic structures but on the other hand ignores the social and cultural structures. Thus it opens the door to an assimilation process which in fact is the consequence when the economy of the Indigenous Peoples no longer is based on the social and cultural structures of their own.

It is considered to be a need for a wording, which more explicitely than the present text takes into account the above-mentioned interrelationship.

I respectfully ask the Working Group to consider the words sociocultural and to be added before the word economic in the second line of the draft operative paragraph 18.

Comments by the Sami Parliament

13. The Working Committee of the Sami Parliament has at its meeting on 11 May 1992 discussed the request for comment on the above subject made by the Ministry of Justice, and, as a result, states the following:

General

14. Even though the circumstances of the indigenous peoples in the world have undergone positive changes in many States, the Sami Parliament does not yet find the situation satisfactory. Consequently, the Sami Parliament considers the work of the United Nations Working Group on Indigenous Populations for a declaration regarding these peoples to be extremely important and urgent. Moreover, the Sami Parliament hopes that the declaration on the rights of indigenous peoples, defining the minimum standards for the survival and the well-being of the indigenous peoples of the world, will be approved by the United Nations as soon as possible.

The draft declaration

15. In the opinion of the Sami Parliament it would be appropriate to emphasize also in the preambular paragraphs of the declaration the central significance of an unspoilt environment to the culture and well-being of the indigenous peoples. In this context the words "and the pollution and destruction of the environment" could be added to the fourth preambular paragraph as follows: "... resulting in the dispossession of the lands, territories and resources and the pollution and destruction of the environment, as well as ...".

16. In the opinion of the Sami Parliament, the understanding and respect of the officials for an indigenous people could be increased if the officials would know the language of the indigenous people. This arrangement would also be more flexible for both parties than interpretation. For these reasons the Sami Parliament proposes that the words "officials knowing the language of the indigenous people or" be added to Part II, paragraph 9, as follows "... where necessary, through officials knowing the language of the indigenous people or by the provision of interpretation or other effective means".

17. The Sami Parliament wishes to make sure that the protection referred to in Part III, paragraph 18, also involves protection against the exploitation, misuse or falsification by "outside parties" of the intellectual property of the indigenous people. If the words "outside parties" make the matter clearer, the Sami Parliament proposes that they be added as follows: "Indigenous peoples have the right to special measures for protection against outside parties, as intellectual property ...".

18. The Sami Parliament further proposes that the first sentence in Part IV, paragraph 18, be supplemented by the word "sociocultural" as follows: "The right to maintain and develop within their areas of lands and other territories their traditional sociocultural and economic structures ..." A corresponding amendment should, if necessary, be made to other paragraphs, too.

19. In the opinion of the Sami Parliament the members of an indigenous people are to enjoy full civil rights in the States in which they live. For this reason the words "citizens with full rights" should be added to Part V, paragraph 21, of the declaration as follows: "The right to participate as citizens with full rights on an equal footing with all the other citizens ...".

20. Finally, the Sami Parliament states that in its opinion the views of the Finnish Sami will be best brought forward in the preparation of the declaration if a representative of the Sami Parliament, as before, takes part in the preparatory work in the delegation of the Finnish Government.